

mailed by the PTO on December 26, 2000, that the PTO has also received a copy of the priority document from the International Bureau. Accordingly, all the requirements under §119 have been met, and the PTO should acknowledge receipt of applicants' papers filed under §119.

Claims 32-56 have been rejected under the first paragraph of §112. This rejection is respectfully traversed.

The PTO has objected to the terminology "enhance the flavor" on the basis that those skilled in the art would not be enabled to make and/or use the invention, presumably because such a skilled artisan would not know what those words mean. With respect, applicants most strongly disagree. The terms in question are well defined in any dictionary.

The term "flavor" is defined in the desk dictionary of undersigned (The Random House College Dictionary, 1975 ed.) as "taste, esp. the distinctive taste of something as it is experienced in the mouth."

The word "enhanced" is defined in said dictionary as "to raise to a higher degree; intensify; magnify."

Therefore, to "enhance the flavor" is to "intensify the taste".

The terminology "flavor enhancement" is in common use. Thus, attached is a printout from the USPTO full-text database (2 pages) listing the first 50 out of 101 U.S.

patents which have issued since 1996 which use the terminology "flavor enhancement" or "taste enhancement". Also attached is a page listing the search results for the terminology "flavor enhancement", with at least three hits. Also attached are four pages from Goggle searches of "taste enhancement" and "flavor enhancement", showing additional hits. Finally, applicants note the article by Fluke and Ueda, cited in the specification, copy filed as citation AJ, clearly teaches enhancing flavor. Therefore, any person skilled in the art would be aware of the meaning of taste and flavor enhancement, based on the prior art.

There is no question as to the meaning of "flavor enhancement", and those skilled in the art would have difficulty practicing applicants' invention based on the disclosure of the present application. Applicants therefore respectfully request withdrawal of the rejection.

Claims 35-37, 39-42, 45, 52 and 53 have been rejected under the second paragraph of §112. The rejection is respectfully traversed.

Applicants believe that the claims as previously drafted, considered in light of applicants' specification (consistent with the law), would not have been confusing to those skilled in the art, and therefore the claims in their previous form are fully in accordance with §112. However,

applicants do acknowledge that some of the criticized claims are not in the best form for U.S. practice, but any objection on this basis would be **only** as to form.

Accordingly, to improve the form consistent with U.S. practice, a number of cosmetic amendments have been made. These amendments are of a formally nature only, i.e. made (as indicated above) to place the claims in better form consistent with U.S. practice. The amendments are not "narrowing" amendments because the scope of the claims has not been reduced. No limitations have been added and none are intended; the meaning of the claims remains the same.

Applicants respectfully request withdrawal of the rejection.

Claims 32 and 33 have been rejected under §102 as anticipated by each of Zelkha et al WO '363 (Zelkha), Yoji JP '868 and Yoji '869. These three rejections are respectfully traversed.

Yoji '868 discloses a "transparent tomato mix drink" obtained by mixing an alcoholic product with a transparent tomato liquid obtained by separating insoluble materials from a heat-treated tomato juice. Insofar as can be determined from the English language abstract, no "clear tomato concentrate" is disclosed or taught in Yogi '868.

Yoji '869 is somewhat similar in also not disclosing the use of any "clear tomato concentrate" as claimed. In Yoji '869 what is taught and disclosed is the preparation of a "mild health drink prepared by pressing (?) gaseous carbon dioxide and carbonated water in a transparent tomato liquid..." (question mark added). Insofar as is known Yoji does not disclose or teach the use of a clear tomato concentrate.

Zelkha is the closest prior art in that it at least constitutes a starting point for the present invention. This document does show the manufacture of a concentrate of soluble tomato solids. The proposed use in Zelkha of the concentrated serum is disclosed at the top of page 8, i.e. "in the preparation of tomato soups, beverages, etc." However, it does not disclose or teach, as claimed, the "adding a clear tomato concentrate to the food in sufficient quantity to enhance the flavor of the food." Again, there is not the remotest hint, let alone a disclosure sufficient to support a rejection based on §102, of the use of only a quantity sufficient to enhance the flavor of the food, i.e. a very small quantity in relation to the quantity of the food product.

The fact that Zelkha does not disclose a flavor enhancement quantity is confirmed by the example at the bottom of page 8 where "310 Kg were used as such, as an additive to vegetable drinks, and 400 Kg were mixed with tomato juice and further processed by spray-drying."

The applied references do not anticipate any of applicants' claims. Accordingly, applicants respectfully request withdrawal of the rejections based on §102.

Claims 34-56 have been rejected under §103 as obvious from each of the three references applied under §102, further in view of JP '871 and De Barros et al, reference AK (De Barros). These rejections are respectfully traversed.

First, none of the three primary references teach or suggest the use of tomatoes as flavor enhancers. The very fact that a clear tomato concentrate could function in this regard, without leaving a tomato flavor, would not have been obvious to the person of ordinary skill in the art at the time the present invention was made. Such a person of ordinary skill in the art would have had no reasonable expectation of such a result from a consideration of the primary references, the secondary references, or any combination thereof.

With respect to Yoji '868 and Yoji '869, applicants respectfully submit that these documents actually teach away from the present invention by clearly indicating the need for **additional** flavoring substances in each case; those having ordinary skill in the art would therefore conclude that the clear tomato liquid would not serve as a flavor enhancing agent.

Zelkha is similarly deficient, again with reference to the example at the bottom of page 8. In each case, the product actually made is a **tomato** product, in one case a vegetable drink (compare the tomato flavor of V-8 juice) and in the other case tomato soup. Clearly there is no hint of a flavor enhancer.

The secondary references do not help in this regard. JP '871 teaches an entirely different application of tomato juice, i.e. for obtaining supernatant (the liquid overlaying material deposited via centrifugation, etc., which is often used for shipping antibodies) from the heated tomato juice. As understood, this document teaches the addition of alkali or alkaline earth metal ions to flavor the transparent supernatant, and thus obtain a transparent drink having a flavor and texture quite different from original tomato juice. Applicants do not see how this teaches either the use of clear tomato concentrate or that such a concentrate is capable of flavor enhancement, let alone the use of such of a concentrate in an amount to enhance the flavor of the food.

The De Barros publication discloses and teaches the thermal concentration of tomato juice or pulp is facilitated by treatment with enzymes. This document appears to have been relied upon on the basis that it is believed by the PTO that it discloses the hydrolysis of tomato juice. Applicants

respectfully disagree. De Barros merely discloses and teaches the use of enzymes in a "cold break" process of producing tomato juice, wherein the enzymes play a role in the separation of the serum phase from the pulp phases. It does not disclose hydrolysis of proteins, but rather the breaking-up of pectin, which is in fact a structural polysaccharide.

In short, the subsidiary references do not make up for the deficiencies of the primary references as discussed above, even if it were obvious to somehow to attempt to combine such references. Applicants' method cannot be gleaned from a consideration of the references together.

With respect to claim 33, applicants agree that flavor enhancers are notoriously well-known and readily available to those of ordinary skill in the art. However, such a fact does make claim 33 obvious. The prior art, even including the well-known use of other flavor enhancers, does not make obvious the use of a clear tomato concentrate in combination with another flavor enhancer for the reasons pointed out above.

Applicants respectfully request withdrawal of the rejections based on §103.

Two new claims 57 and 58 are added, claim 57 being based on line 2 of page 4 of the specification, and claim 58 being based on example 2 on page 3. These claims are

patentable for the same reasons as the other claims, as pointed out above.

Applicants respectfully request favorable reconsideration and allowance.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicants

By Sheridan Neimark
Sheridan Neimark
Registration No. 20,520

SN:jaa
Telephone No.: (202) 628-5197
Facsimile No.: (202) 737-3528
E-mail: SNIMARK@AOL.COM

Version with Markings to Show Changes Made

32. (amended) A method of enhancing the flavor of foods comprising adding a clear tomato concentrate as a taste enhancer to the food in sufficient a quantity sufficient to enhance the flavor of the food.

39. (amended) A method in accordance with claim 38, wherein the ~~serum~~-clear tomato concentrate is a hydrolyzed and then concentrated ~~tomato serum~~.

40. (amended) A method in accordance with claim 38, wherein the clear tomato serum is a concentrated and then hydrolyzed tomato serum.

41. (amended) A method in accordance with claim 3238, wherein the hydrolysis is carried out using the natural acid present in the concentrate serum, and heat.

42. (amended) A method in accordance with claim 3238, wherein the hydrolysis is carried out via protolytic enzymes.

45. (amended) A method in accordance with claim 32, wherein the clear tomato concentrate is present with a carrier is selected from the group consisting of maltodextrins, starch, starch derivatives, sugars, corn syrup solids, gums, salts and mixtures thereof.

52. (amended) A method in accordance with claim 3349, wherein the hydrolysis is carried out using the natural acid present in the concentrate serum, and heat.

53. (amended) A method in accordance with claim 3349, wherein the hydrolysis is carried out via protolytic enzymes.